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Remarks

The Examiner's Office Action mailed March 25, 2003 and the references cited therein have been reviewed. In this response, claim 2 is canceled, claims 1 and 3 are amended, and new claims 23-28 are added. Applicant requests that the application be reexamined and reconsidered in view of these amendments and further in view of the following remarks.

Applicant notes with appreciation that the Examiner has allowed all of Applicant's original claims 10-22.

Applicant further notes that the Examiner has merely objected to Applicant's original claims 2, 3, and 6-8 as being dependent upon a rejected base claim. In order to overcome this objection and obtain allowance of these claims, applicant has (a) amended claim 1 to include all of the limitations of original claim 2; (b) rewritten claim 6 in independent form, including all of the limitations of base claim 1 and intermediate claim 5, as new claim 23; and (c) rewritten claim 7 in independent form, including all of the limitations of base claim 1, as new claim 24. Applicant therefore respectfully submits that all of the Examiner's objections have been overcome and that all of Applicant's claims 1, 3-9, and 23-25 are in condition for allowance.

In the Office action mailed March 25, 2003, Applicant's original claims 1, 4, 5, and 9 were rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,080,437, issued to Mauer, et al. Applicant's original claims 1, 4, and 9 have been rewritten, without any change thereto, as new claims 26-28. Applicant respectfully submits, for the following reasons, that Applicant's claims 26-28 are patentable over the disclosure of Mauer, et al.

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Applicant's claim 26 calls for a process for preventing food-borne illness comprising the step of heating a surface of a food product in a manner effective for achieving at least a 3 log reduction in live bacteria on the product surface. Further, claim 26 expressly requires that such heating step be conducted without causing any substantial color change in the product surface. Applicant's claim 27 depends from claim 26 and provides that the product surface is heated to a temperature of at least 160°F without causing any substantial color change in the surface.

In contrast to the surface pasteurization process called for in Applicant's claims 26-28, the "pasteurizing" process disclosed by Mauer, et al. is simply a slow cooking process wherein a raw product (col. 2:64-67, col. 3:62-67, col. 5:29-31, and col. 7:54-64) is cooked at a temperature of less than 200°F, for an extended period of time, to achieve deep heat penetration throughout the product. During the Mauer, et al. slow cooking process, the product is naturally marinated in its own juices as they weep from the product. (Col. 4:3-8, Col. 7:2-10, Col. 7:22-26; Col. 7:54-64, and Col. 9:57-64.) The products cooked in accordance with the Mauer, et al. method are then sold to the public as "precooked" products.

Applicant also notes that Mauer, et al. do not teach that the surface color of the product does not change substantially during the Mauer, et al. cooking process. Rather, Mauer, et al. simply teach that the appearance of the product is not adversely affected by their slow cooking process as compared to prior art fast cooking processes. It is well known in the art, for example, that even when cooked in a bag, a raw poultry product will be converted from a translucent, raw, fleshy appearance to a solid white, non-translucent color. In this same regard, Mauer, et al. teach that even the bones

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of the product are turned white as a result of their slow cooking process. (See, e.g., Col. 7:49-53.)

Thus, contrary to the express requirements of claims 26-28, the Mauer, et al. process clearly does not achieve a reduction in live bacteria without substantially changing the surface color of the product.

* * * * *

In view of the above, Applicant respectfully submits that all of Applicant's claims 1, 3-9, and 23-28, are in condition for allowance. Applicant therefore requests that all of the Examiner's rejections and objection be withdrawn and that the Examiner add claims 1, 3-9 and 23-28 to the list of allowed claims.

This paper is intended to constitute a complete response to the Examiner's Office Action mailed March 25, 2003.

Respectfully submitted,

 6/10/03
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